

**Ravalli County Planning Board
Meeting Minutes for March 21, 2007
3:00 p.m.
Commissioners Meeting Room, 215 S. 4th Street, Hamilton, Montana**

Public Hearing

Fin and Feather, Lot 5, AP (Crane) Subsequent Minor Subdivision and One Variance Request –
Continuation
Greathouse Place (Greathouse) Minor Subdivision
Roger Russ (Russ) Minor Subdivision and Three Variance Requests

*This is a summary of the meeting, not a verbatim transcript. A CD of the meeting
may be purchased from the Planning Department for \$5.00.*

1. Call to order

Chip called the meeting to order at 3:04 p.m.

2. Roll Call (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (present)
Dale Brown (absent – unexcused)
Phil Connelly (present)
Ben Hillicoss (present)
Dan Huls (absent – excused)
Lee Kierig (present)
Maura Murray (present)
Chip Pigman (present)
Tom Ruffatto (absent-excused)
Les Rutledge (present)

Park Board Representative: Bob Cron (present)

(B) Staff

Jennifer Degroot
Karen Hughes
John Lavey
Tristan Riddell
Renee Van Hoven

3. Approval of Minutes

Chip asked if there were any corrections or additions to the minutes from February 21, 2007.
There were none. The minutes were approved as presented.

4. Amendments to the Agenda

There were none.

5. **Correspondence**

Staff noted receipt of correspondence from Kathleen Mielke regarding Greathouse Place and Maria Woolsey and Diana Thomas-Rupert regarding Roger Russ Subdivision. (See Attachment B, Letter from Kathleen Mielke dated March 20, 2007, and Attachment C, Email from Maria Woolsey dated March 18, 2007, and Letter from Diana Thomas-Rupert dated March 19, 2007)

6. **Disclosure of Possible/Perceived Conflicts**

There were none.

7. **Public Hearing**

(A) **Fin and Feather Lot 5, AP (Crane) Subsequent Minor Subdivision and One Variance Request**

- (i) Staff Report on the Subdivision Proposal: **John Lavey** gave an update on the subdivision proposal. He noted that the Board recommended approval of the variance request at the February 21, 2007, meeting, but extended the public hearing to today so that Staff, the Floodplain Administrator, the applicant, and the applicant's agent could come to an agreement on an appropriate setback from Sheafman Creek. He noted that the new proposal is for a 30-foot no-build/alteration zone north of Sheafman Creek and a 120-foot restricted area north of that. He noted that the property does not extend below Sheafman Creek to the south and that the storage of logs is fine in its present situation, but should not be expanded. He entered the Staff Report into the record. (See Attachment D, Fin and Feather Lot 5, AP (Crane) Staff Report Update)

- (ii) Three Minute Rule Waiver Requests

There were none.

- (iii) Public Comment on the Subdivision Proposal and Variance Request

- (a) Persons in Favor

George Marshall asked the Board to condition that logs could be stored based on historical use instead of present use. He also noted that the applicant plans to rebuild the existing shop within the restricted area, but will not add water or sewage facilities or convert the shed into a residential structure.

- (b) Persons Opposed

There were none.

- (c) Rebuttal

There was none.

- (d) Close: Public Comment

(iv) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Chip asked why the 120-foot restrictive zone was needed and for evidence to support the changes from the previous staff report.

John explained that Chris Clancy from MFWP went onsite and wanted to see “unabused” areas remain in that condition. The restricted areas will remain in a semi-natural state, but will allow the applicant some uses.

Chip said that the issue went from a public health and safety issue to a wildlife and wildlife habitat issue. He noted that Mack Long was satisfied with a 30-foot setback and noted that although this might meet the needs of the applicant, the applicant will not own this property forever.

Renee noted that originally the setback was recommended under effects on wildlife and wildlife habitat and public health and safety.

John noted that the conversation with Chris Clancy was not documented. He stated that the current proposal was acceptable to MFWP, the applicant, and Planning Staff.

Lee said that in the absence of a stream setback ordinance, the Board has to rely on experts to define setback edges. He noted that although this proposal creates additional restricted areas, it still contains fewer restrictions than proposed at the last meeting.

Lee motioned to accept the current setback language as described in the Staff Report Update. He motioned to approve the subdivision with a \$250 per lot contribution to the school district.

Les seconded the motion.

George said that during the last public hearing, he suggested that the \$250 contribution to the schools and \$500 contribution to the fire department only be required for the new lot.

Lee said that any contribution to the school system when creating new subdivisions should be part of the expected costs. He said that the applicant should be required to pay the contribution for both lots.

Ben explained that the last legislature passed an impact fee bill. Thus far, the Florence-Carlton and Corvallis School Districts have completed impact fee studies that concluded each additional student added impacts of thousands of dollars. He noted that the old contribution fees were voluntary and much lower. State statutes do not allow the Board to turn down a subdivision for failure to contribute monies to a school district. He noted that this issue might be changed in the current legislature. He said that if the BCC does enact impact fees, they will be paid when a house is constructed, not during the subdivision process. He stated that these impact fee studies seem to request more realistic fees than what is currently volunteered.

Chip added that until the BCC decides they want to adopt impact fees, school costs are borne by taxpayers or a voluntary contribution.

Les stated that in lieu of a better study, the Board has no reason to increase the school contribution past the normal donation of \$250.

Chip noted that impact fees are not triggered by subdivisions; they are triggered by building or septic permits. He noted that the subdivision does not create an impact; construction of a home creates an impact. He noted that voluntary contributions are up to the BCC.

Ben said that it would be hard to negotiate an impact fee, but the Board could send a statement to the BCC that \$250 is a woefully inadequate contribution and they could negotiate something else.

Lee noted that the trigger mechanism puts it out of the Board's hands. He said that down the road, some impact fees are justified, but he has a hard time agreeing on the standard \$250 because of precedence.

Bob noted that the voluntary contribution is not an impact fee. The rationale behind it was to provide revenue to schools in the interim between creation of the lots and landowners paying taxes on the lots. It is a modest fee for operation, not capital improvements.

Phil noted that State Law allows school districts to negotiate the donation, but asked why the Planning Board should negotiate the amount with the applicant.

Ben noted that the applicant and school district can negotiate, but for some reason, the process with the school districts is broken. Recently, the Planning Board is never given an amount and the Board decides what to charge the developer.

Lee amended his motion to require a \$250 school district contribution for the new lot created and a \$500 contribution to the fire district for new lot. He included allowance of the historical use of logging operations.

Les seconded the amendment.

(a) Board action

(1) Board Decision

The vote was called; the members voted (7-0) to conditionally approve the Subdivision. (See Attachment E, Fin and Feather Lot 5, AP (Crane) Subdivision Vote Sheet)

(B) **Greathouse Place (Greathouse) Minor Subdivision**

Ben Hillicoss recused himself from the discussion and vote on this subdivision.

- (i) Staff Report on the Subdivision Proposal: **John Lavey** gave an overview of the subdivision proposal. He noted that the area marked on the plat as a no-build zone

is now a no-build/alteration zone. He stated Staff recommended approval of the subdivision subject to ten conditions in the Staff Report. He entered the Staff Report into the record. (See Attachment F, Greathouse Place Staff Report)

(ii) Three Minute Rule Waiver Requests

There were none.

(iii) Public Comment on the Subdivision Proposal and Variance Requests

(a) Applicant and the applicant's representatives

Terry Nelson from Applebury Survey agreed with the Staff Report, with the exception of Condition 5. He asked that the fire contribution only be required for the four newly-created lots. He gave a synopsis of voluntary contributions to schools. He said that in 1995, the Montana Legislature added a law that counties cannot deny a subdivision based solely on impacts to schools and said that schools can negotiate school contributions with developers. Most developers did not contribute anything to schools after that. He stated that the voluntary contributions have grown over the past few years and volunteered \$250 per each newly-created lot in this subdivision.

(b) Persons in Favor

There were none.

(c) Persons Opposed

There were none.

(d) Close: Public Comment

(v) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Bob asked if the subdivision accessed off US Highway 93.

Terry answered that it did. MDT gave the subdivision a preliminary approach permit for this number of lots on a private road, but did not want a public road that could extend past the subdivision. He noted that the existing driveway access will be abandoned.

Les stated that there appear to be two drainages on the property and asked if they were intermittent streams.

Terry stated the southern area does have an intermittent stream, but the other area is low and might collect irrigation water or water under extreme conditions. He stated that the area in the northeastern corner of the plat is low, but not a drainage or stream. He noted that the applicant would be fine with placing a no-build/alteration zone along the green sweep in the northeastern corner.

Phil noted that Kathleen Mielke, a neighbor of the subdivision, claimed that creation of this subdivision would impact her water rights.

Bob noted that her property is northeast of the railroad right-of-way and would not be impacted by this subdivision.

Terry explained that the highway was redone, which could have affected her water supply. He stated that her water rights are for waste and seepage. He also noted that the current owner had not continued irrigation practices of previous owners.

Les asked if the landowner had hauled fill on the property to drain it or dry it out.

John Greathouse said he did not. He noted that during the irrigation season, water flows under the highway in a ditch, but has never been cut off based on his actions. He noted that he removed the water right that was associated with the proposed subdivision.

Les motioned to approve the subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report with three exceptions: he deferred the voluntary school contribution to negotiations between the applicant and the Florence-Carlton School District; he stated that \$500 should be given to the Fire District only for the four newly-created lots; and he noted that a no-build/alteration zone in the northeastern drainage area of the plat would be required.

Mary Lee seconded the motion.

(b) Board action

(1) Review of Subdivision Proposal against the Six Criteria

The Board did not review the Six Criteria beyond their discussion and the findings of fact and conclusions of law on the subdivision proposal in the Staff Report.

(2) Board Decision

The vote was called; the members voted (6-0) to conditionally approve the Subdivision. (See Attachment G, Greathouse Place Subdivision Vote Sheet)

(C) **Roger Russ (Russ) Minor Subdivision and Three Variance Requests**

The Board took a five-minute break.

- (i) Staff Report on the Subdivision Proposal: **Tristan Riddell** noted that there was much confusion the last time this subdivision was before the Board. He noted that the previous subdivision proposal had irrigation issues and included a non-buildable lot. He gave an overview of the current subdivision proposal and three variance requests and stated Staff recommended conditional approval of Variance Requests 1 and 2, approval of Variance Request 3, and approval of the subdivision subject to eleven conditions in the Staff Report. He entered the Staff Report into the record.

(See Attachment H, Roger Russ Staff Report and Attachment I, Roger Russ Staff Report Update)

(ii) Three Minute Rule Waiver Requests

Susan Brown submitted a three-minute rule waiver request, which was granted without a time limit. (See Attachment J, Three-Minute Rule Waiver Request from Susan Brown)

(iii) Public Comment on the Subdivision Proposal and Variance Requests

(a) Persons in Favor

John Kellogg, with Professional Consultants, Inc., noted that there was confusion at the previous Planning Board hearing regarding the property's bisecting by a county road. Although the applicant had proposed a commercial lot to the north to simplify matters, the County Attorney determined that because the easement provided access to BRID, the use was commercial and would need to be paved. The applicant did not want to pave a driveway to benefit his neighbor to the north and subsequently redesigned the subdivision with three lots. This triggered another variance request for bisecting lots. He stated that North Burnt Fork Road is considered an internal subdivision road and would need to be paved under the regulations. The applicant proposed a variance from that regulation because the intention of the rule was for paving internal roads that accessed the subdivision. He noted that the Planning Board supported the variance requesting access off Middle Burnt Fork Road at the previous hearing. He stated that Planning Staff was in touch with Dave Ohnstad, who was concerned about the principle of accessing onto a road of higher classification, such as Middle Burnt Fork Road. He assured the Board that traffic in that area is relatively low. He stated that Staff's recommendation from the previous day was for a common access for Lots 1 and 3. The applicant would accept that, but would prefer separate accesses because then the driveway lengths could be shortened. He noted that although the former owner had occasionally irrigated the land from modified sources, the water rights belonging to the current owners is not presently accessible. He proposed an additional condition on the plat that the owners of the subdivision do not have a right to use water from an irrigation ditch that passes through the property. The drainage through the middle of the property is an open irrigation ditch that provides irrigation to the western property.

(b) Persons Opposed

Susan Brown, a nearby landowner, noted she was concerned with effects this subdivision would have on local services and public health and safety. She noted that Middle Burnt Fork Road is narrow, with no shoulder, holes in the center, and is in need of resurfacing. She noted that the County does not have a plan or priority for resurfacing Middle Burnt Fork Road. She passed out a traffic report and noted that the portion of Middle Burnt Fork Road east of the subdivision has a poor safety record, with five reported accidents between January 1, 2004, and December 31, 2006, and three additional accidents since that time. She noted that in 1995, there were two fatalities on the road. The police did a subsequent study and determined the speed limit should be raised

from 45 mph to 55 mph. She stated that the treacherous zone in this area is where North Burnt Fork and Middle Burnt Fork Roads intersect because people accelerate to pass along the broken yellow line. She stated that increased traffic on North Burnt Fork Road will exasperate this hazardous intersection. She noted that to the west, there is a deer crossing and a bridge that is slick in the winter.

She noted that North Burnt Fork is a dirt road and granting the variance would add additional particulate matter to the road, especially since this area already does not meet air standards. She did concede that oiling North Burnt Fork Road might solve a particulate problem, but would not remove hazards. She stated that there is no physical limitation to allow only one access onto Middle Burnt Fork Road, noting this decision might set precedence. She stated that any variance to increase demand on local services, increase potential hazards, or increase particulate matter should be denied. She suggested requiring all three lots to access off Middle Burnt Fork Road and noted that Variance 1 is not unique to this property. She said that if there is a single access, she would support Variance 2, for paving. She also requested a no-build/alteration zone along North Burnt Fork Road as condition to supporting Variance 3, noting this is unique to the property. (See Attachment K, Traffic Information regarding the Roger Russ Subdivision)

David Anderson, a property owner to the west of the proposed subdivision, expressed concerns about the artisan spring he has in his cellar, which is located directly downhill from the subdivision. He stated that he does not know the source of the water, but is concerned that if houses are constructed in this subdivision, the spring could stop or be contaminated from the septic systems. He asked what recourse he would have if these items happened.

He agreed that Middle Burnt Fork Road is somewhat dangerous because motorists drive too quickly. He preferred one access onto Middle Burnt Fork Road, because it is easier to pay attention to one access when the speed limit is so high. He noted that he runs on North Burnt Fork Road frequently and in one section, there is a blind spot in both directions. He was concerned that the proposed driveway would be in the blind spot. He noted that North Burnt Fork Road is an existing road; he stated that the developer should not be required to pave it, but noted it is horribly dusty and slick in the winter. He stated that the County put down $\frac{3}{4}$ " crushed rock when they resurfaced the road the previous year, but now people can hardly walk or drive on it. He asked for a compromise.

Paul Kink stated that he and Diane Thomas-Rupert own the White Feather Ranch to the west of this subdivision. He noted that they are not in opposition to the subdivision, but had some concerns about the roads, as addressed in Diane's letter. (See Attachment C, Letter from Diane Thomas-Rupert dated March 19, 2007) He noted that there are many blind spots on the roads, which have led to multiple rollovers through his fence. He asked why there is any need to drive on this section of North Burnt Fork Road and proposed closing and gating it north of the subdivision accesses. He stated that if the road is not closed, he would oppose Variance Requests 2 and 3. He offered to pay for the gates and maintain the upper section of North Burnt Fork Road.

(c) Rebuttal

John Kellogg agreed with Susan Brown that there are accidents along this road and that as a volunteer fire fighter in Stevensville, he had to pick up the pieces from fatalities. He noted that this subdivision proposal is not to change the existing road configuration or the intersection of North Burnt Fork and Middle Burnt Fork Roads. He did not know why anyone would travel west on North Burnt Fork Road and stated that the reported blind spot is to the west of the property, but the proposed driveways are not in a blind spot. He added that the applicant will have to pay a healthy pro rata share because the county roads which provide access to the subdivision do not meet county standards.

He hypothesized that Mr. Anderson's artisan spring would not be affected by the wells dug in this subdivision because he is on the other side of the Creek. He said that if he could draw a connection between a well drilled and someone's rights, that person would have a basis to file a claim against the person who drilled the well. He noted that dust abatement on North Burnt Fork Road is a recommended condition from Staff.

Susan Brown said that if the County allows accesses off North Burnt Fork Road, the traffic will have to come out at the intersection of North Burnt Fork Road and Middle Burnt Fork Road. She said that her suggestion would minimize the accesses to one point.

John Kellogg explained that the Subdivision Regulations requires the developer to access off the road with the lowest classification, which would require all the accesses to be off North Burnt Fork Road. He noted that this subdivision will create a relatively minor impact.

Chip assured her that sometimes common sense does not mesh with the Subdivision Regulations.

Bill Burnett noted that the neighbors could petition the County to add a double line past the main intersection, which would eliminate concerns of that curve.

(d) Close: Public Comment

- (iv) Board Deliberation on Variance Request 1 (To allow individual accesses instead of an internal subdivision road)

(a) Board discussion and questions

Les stated that he knows the roads well, but there have been no accidents at the intersection of Middle Burnt Fork and North Burnt Fork Roads. He said that he does not consider additional traffic from the subdivision to be a safety hazard. He also noted that dust mitigation will help with the situation. He noted concerns with water availability.

John Kellogg noted that the capability of the site to produce domestic water wells has been acceptable by the county or state.

Les said that the Board needs to consider the possibility of requiring one entrance (i.e. a common access) off North Burnt Fork Road.

Ben discovered that the oil abatement off North Burnt Fork Road would be applied only once before final plat approval and noted that after a year, dust would be a problem.

John Kellogg noted that North Burnt Fork Road is a county-maintained road and it would not be fair for two landowners to pay for its ongoing dust abatement. He noted that in the long run, other neighbors might want to join together to pay for it, however.

Chip noted that the pro rata paid should be used for dust abatement in future years.

Phil noted Staff stated that the conditions on which the variance is requested are not unique to the subject property. He asked if this variance is a common request.

Karen explained that Staff was looking for a condition unique to the property. If other properties have a similar situation, it is not considered unique.

Les motioned to approve Variance 1 based on the findings of fact and conclusions of law in the Staff Report and subject to the conditions in the Staff Report with the addition of requiring Lots 1 and 3 to use a common access off North Burnt Fork Road.

Maura seconded the motion.

(b) Board Action

The vote was called; the members voted (7-0) to conditionally approve the variance. (See Attachment L, Roger Russ Variance 1 Vote Sheet)

(vi) Board Deliberation on Variance Request 2 (To allow relief from improving North Burnt Fork Road)

(a) Board Discussion and Questions

Les motioned to approve Variance Request 2 based on the findings of fact and conclusions of law in the Staff Report and subject to the conditions in the Staff Report.

Lee seconded the motion.

(b) Board Action

The vote was called; the members voted (7-0) to approve Variance 2. (See Attachment M, Roger Russ Variance 3 Vote Sheet)

(vi) Board Deliberation on Variance Request 3 (To allow lots to be bisected by a public right-of-way)

(a) Board Discussion and Questions

Les motioned to approve Variance Request 3 based on the findings of fact and conditions in the Staff Report and subject to the conditions in the Staff Report.

Maura seconded the motion.

(b) Board Action

The vote was called; the members voted (7-0) to approve Variance 3. (See Attachment N, Roger Russ Variance 2 Vote Sheet)

(vi) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Ben noted that some neighbors wanted the Planning Board to recommend to the BCC that the portion of North Burnt Fork Road that provides access to the subdivision be closed.

David Anderson noted that many people walk along that stretch of North Burnt Fork Road and would be upset if it was closed. He said that the alternate route would be through the middle of the Meyer place, which is already dangerous.

Les recommended painting a straight yellow line down the middle of Middle Burnt Fork Road to discourage passing and studying the road situation. **Lee** noted that the neighbors could create a special improvement district to upgrade the roads. **Bob** suggested looking at the speed limit in that area. **Susan Brown** noted that if the yellow line is only extended to the access for Lot 2, people might try to pass at the bridge. She suggested leaving the road study open-ended.

Tristan assured the Board that these recommendations would be included in the Request for Commission Action sent to the BCC.

Les motioned to approve the subdivision based on the findings of fact and conclusions of law in the Staff Report and subject to the conditions in the Staff Report with a \$250 per lot contribution to the School District.

Mary Lee seconded the motion.

(b) Board action

(1) Review of Subdivision Proposal against the Six Criteria

The Board did not review the Six Criteria beyond their discussion and the findings of fact and conclusions of law on the subdivision proposal in the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-0) to conditionally approve the Subdivision. (See Attachment O, Roger Russ Subdivision Vote Sheet)

8. **Close Public Hearing**

9. **Communications from Staff**

(A) **Creation of the Subdivision Review Screening Committee**

Renee noted that some subdivisions under the new Subdivision Regulations are close to being deemed complete and the Board needed to designate three members for the Subdivision Review Screening Committee.

Bob volunteered to be the chair and serve for one month. **Lee** volunteered for two months. **Maura** volunteered for three months. The Board decided not to appoint an alternate.

(B) **Update on Countywide Zoning Project**

Karen explained that the Public Policy and Research Institute wants to interview about 25 to 30 key stakeholders in the community one-on-one to see if the County is on track with the zoning project. She asked the Planning Board to indicate their top ten picks on a list of potential interviewees, explain why they were chosen, and return the lists to her. (See Attachment P, Potential Interviewees and Attachment Q, Countywide Zoning Project Update to the Planning Board)

She said that the Public Involvement Group has been working on the role of Planning Committees. She said that she has been hearing concerns about groups of people taking over the process at certain points and asked the Board to review a portion of the draft Public Involvement Plan. (See Attachment R, Section 2 Draft of Public Involvement Plan)

She noted that the Land Use Subcommittee is almost finished with the second draft of zoning districts and matrices. They wanted to look at cluster development standards and subdivision planned unit development standards. She also noted that a Request for Proposals for the land suitability and capability analysis was sent out. There will be a technical committee created to review the proposals and a Board member may want to be on that committee.

Lee volunteered to help review the proposals.

Karen also noted that the Planning Department is preparing a grant proposal for a Community Development Block Grant. The funds received from the grant will probably be used for the GIS project.

(C) **Update on Stream Setback Committee Proposal**

Karen noted that the BCC will have a public hearing on the Streamside Setback Committee soon. At their meeting to discuss a public hearing on the issue, the BCC requested three of the five at-large positions to be from conservation-minded groups.

(D) Update on Florence Community Planning Committee

Ben explained that the Florence Community Planning Committee met the previous evening and about 30 people attended. About 15 indicated they would like to be more heavily involved. He said they discussed the need for education/training, with most people preferring two to three two-hour meetings as opposed to a longer meeting on a Saturday. The group planned to meet again in two weeks.

Les said he was impressed with the amount of interest, but the groups are now facing a lack of information to get started.

Ben said that one participant stated that the Supreme Court did not give the County permission to zone and said that Karen or a lawyer should attend the next meeting to answer that assertion.

Karen noted that the Public Involvement Plan discusses the next round of meetings, which will discuss zoning in more detail and cover the roles and functions of Planning Committees. She said that the workshops done in each school district should be done first before the Planning Board, BCC, and Staff so everyone is up to speed. She said that it might take about a month until workshops can begin in the school districts.

Ben submitted a contact list of people who came to the Florence meeting.

Lee noted that the *Ravalli Republic* has volunteered to print meeting notices in the paper.

Maura said that she has a contact list for the Lone Rock area as well.

Phil asked what has happened with the University of Montana group who was working on the Highway Corridor.

Karen noted they sent an update recently and she will forward it to the Board.

10. Communications from Public

There were none.

11. Communications from Board

Karen noted that Ben Hillicoss will represent the Planning Board at the Powell Planning Conference the coming week.

12. New Business

(A) Discussion on Bitterroot Rail Forum

The Board agreed to move this item to a subsequent Planning Board Meeting.

13. Old Business

(A) Discussion and recommendation on the Planning Board By-Laws

The Board agreed to move this item to a subsequent Planning Board Meeting.

14. **Next Regularly Scheduled Meeting**

Karen noted that there was a Third Countywide Zoning Meeting that evening at 7:00 p.m. The March 28, 2007, meeting was cancelled due to lack of subject matter.

15. **Adjournment**

Chip adjourned the meeting at 5:49 p.m.